

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	Vincent P. Walker et al.	Art Unit :	3724
Serial No. :	10/799,946	Examiner :	Sean M. Michalski
Filed :	March 11, 2004	Conf. No. :	8017
Title :	SHAVING RAZORS AND SHAVING CARTRIDGES		

Mail Stop Appeal Brief - Patents

Commissioner for Patents

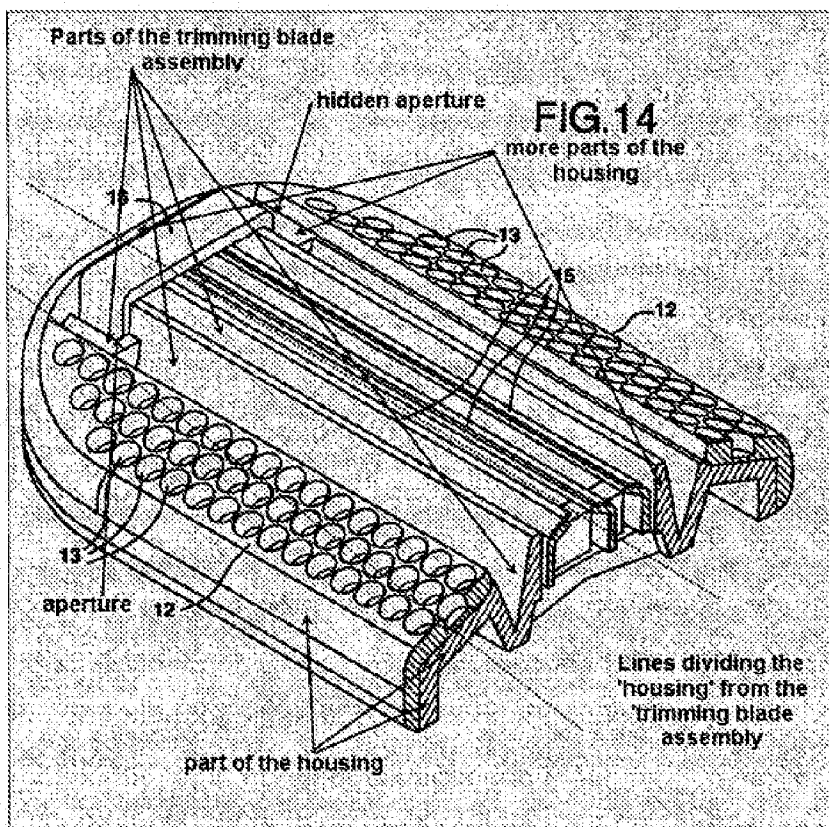
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REPLY BRIEF

Pursuant to 37 C.F.R. § 41.41, Appellants respond to the Examiner's Answer as follows:

At page 32 of the Examiner's Answer, the Examiner offers a new interpretation of what portion of Brown constitutes the claimed "trimming blade assembly." In the Examiner's marked- up version of Fig. 14 of Brown, reproduced below, the Examiner draws two arbitrary lines to divide "the 'housing' from the 'trimming blade assembly.'" The Examiner asserts that one of the L-shaped members (the members that hold the legs of clip 16) within the two arbitrary lines constitutes the claimed "opening defined by the trimming blade assembly." The Examiner further asserts that the other "hidden" L-shaped member, which is outside of the Examiner's two arbitrary lines, constitutes the claimed "aperture" defined by the housing.



The new interpretation is unreasonable because the claims specify that the “the trimming blade assembly [is] secure[ed] . . . to the housing relative to the shaving blades, such that when the trimming blade is in contact with a user’s skin the cutting edges of the one or more shaving blades are disposed on a surface facing away from a surface contacting the user’s skin.” The section between the Examiner’s two arbitrary lines cannot be properly construed as being the claimed “trimming blade assembly” because the Brown is not configured to allow for the rearward facing blade to contact a user’s skin while the cutting edges of other blades are disposed on a surface facing away from the surface contacting the user’s skin. Although the Examiner admits this, the Examiner continues to allege that the rearward facing blade of Brown constitutes a trimming blade, even though it does not meet the requirements of the claimed “trimming blade.” *See e.g.*, Examiner’s Answer, page 29, lines 7-9. This is improper and appears to be an attempt by the Examiner to suggest a similarity between the trim blade 4 of Rozenkranc and the rearward facing blade of Brown, when no similarity in function actually exists.

The new interpretation is also unreasonable because the lines are arbitrary and Brown does not remotely suggest that the section of the razor between the Examiner’s arbitrary lines is a “trimming blade assembly” that is separate from the housing. The claims recite that the trimming blade assembly is “retained on the housing by the clip.” This is not true of the section of the housing of Brown alleged by the Examiner to be the trimming blade assembly. The section of the housing between the two arbitrary lines is actually part of housing and is thus not retained on the housing by the clip. Accordingly, the Examiner’s interpretation is in error.

There is also nothing in Brown that would give one having ordinary skill in the art any reason to chop out the section between the Examiner’s two arbitrary lines and move it to another portion of the razor so that it meets the requirements of the claimed “trimming blade assembly.” Rozenkranc also does not suggest this arbitrary segmentation and rearrangement of Brown. Appellants note that the Examiner is not merely suggesting the addition of the trim blade 4 disclosed by Rozenkranc to the device of Brown, but the chopping up and rearrangement of the

Brown device based on Rozenkranc. As previously noted, the rearward facing blade of Brown performs a different function than the trim blade of Rozenkranc.

The Examiner has also failed to show that the artisan would have had a reasonable expectation of success in making the L-shaped portion within the two arbitrary lines continue to secure the rearward facing blade of Brown once the middle section of Brown is chopped out and attached to another portion of the Brown razor. The clip 16 of Brown works by having opposite ends of the clip secured as shown in opposite L-shaped portions. Cutting the clip in half and moving one of the L-shaped members would not seem to result in a clip arrangement that continues to secure the blades. The Examiner's alleged modification of Brown remains a wholesale redesign of the Brown razor, seemingly motivated merely by hindsight analysis. There is no reason why an artisan having ordinary skill in the art would elect to segment and rearrange the Brown razor in the manner alleged by the Examiner if the artisan wanted the function of the trim blade of Rozenkranc.

At page 34, line 17 – page 35, line 13 of the Examiner's Answer, the Examiner alleges that *In re Ratti*, 270 F.2d 810 (C.C.P.A. 1959), is inconsistent with the Supreme Court's ruling in *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, (2007). This is incorrect. No court has ruled that *In re Ratti* is inconsistent with *KSR*; in fact Appellants assert that the ruling in *In re Ratti* that a "suggested combination of references [that] require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate" does not establish a *prima facie* case of obviousness is entirely consistent with *KSR*'s warning against the use of hindsight. "A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning." *KSR*, 127 S.Ct. at 1742. A substantial reconstruction and redesign of elements and a change in the basic principle under which the elements were designed to operate does indicate the use of hindsight analysis. Accordingly, Appellants assert that *In re Ratti* remains good law.

Furthermore, Appellants maintain that the ruling in *In re Ratti* supports the Appellants position of non-obviousness of the currently pending claims. Not only does the Examiner's alleged modification of Brown require the chopping up of the razor to move a select middle

section of the razor to a front or rear end of the razor, it also requires a redesign of the housing so that a clip can extend through the housing and through a portion of the trimming blade assembly and a redesign of the clip so that it attaches a separate trimming blade assembly to the housing, the trimming blade assembly being positioned so that when the trimming blade is in contact with the user's skin the cutting edges of the shaving blades are disposed on a surface facing away from the surface contacting the user's skin. The lengthy (42 page) Examiner's Answer alleges so many modifications that the resulting device is difficult to even imagine. One having ordinary skill at the time of invention, without the benefit of the Appellants' disclosure, would not see any reason to make all of the alleged modifications.

For these reasons, and the reasons stated in the Appeal Brief, Appellants submit that the final rejection should be reversed.

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Respectfully submitted,

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